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No. 95-55

In The

Supreme Court of the United States

October Term, 1995

ROBERT H. TAYLOR,

Petitioner,

vs.

CUMMINS ATLANTIC, INC.,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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RESPONDENT'S BRIEF IN OPPOSITION

STATEMENT OF THE CASE

This is a very simple case involving an individual, the Petitioner Robert H. Taylor, who was hired in 1959 by a predecessor of Respondent, Cummins Atlantic, Inc.,[1] to work as a commission salesman. Following a change in the company's commission schedule, which displeased the Petitioner, his job

1. Pursuant to Rule 29.1, Respondent states that Cummins Atlantic, Inc., is a privately owned franchise of Cummins Engine Company, a corporation.

performance deteriorated and he was eventually terminated for this reason.

Petitioner's response to this misfortune of his own making was to sue Respondent, alleging a multiplicity of claims, including a violation of the South Carolina Wage Payment Act, age discrimination, fraud, intentional infliction of emotional distress, and breach of contract. The district court granted Respondent's motion for summary judgment on the grounds that Petitioner had failed to adduce sufficient evidence to support any of his claims. [App. 3]. The district court later denied Petitioner's so-called "Motion for Reconsideration." [App. 4].

Petitioner appealed only the breach of contract claim to the United States Court of Appeals for the Fourth Circuit, which affirmed the decision below in a per curiam opinion. [App. 1]. The court later denied Petitioner's petition for a rehearing. [App. 2].

Petitioner now wants his case to be heard by the Supreme Court of the United States, apparently sitting as the court of last resort over South Carolina employment contract claims.

SUMMARY OF THE ARGUMENT

No "special and important reasons" under Rule 10 exist for this Court to review what are exclusively state common law, employment contract issues and the propriety of resolving those issues by granting a motion for summary judgment.

Petitioner's claim that he was denied a jury trial confuses the question of what is a jury issue with the question of whether a plaintiff has adduced sufficient evidence to withstand a motion for summary judgment. The latter question is for the judge to decide.

Petitioner has erroneously stated as ultimate facts what the district court expressly found not to be supported by the evidence adduced — namely that he was "wrongfully" discharged, that the handbook and manual applied to him, and that the resulting contract was breached. He has mischaracterized the decisions below. And he has misstated South Carolina law.

REASONS FOR DENYING THE WRIT

Respondent Cummins Atlantic, Inc., respectfully submits that the petition for a writ of certiorari in this case should be denied, for the following reasons.

I.

THE PETITION MERELY CHALLENGES THE LOWER COURT'S INTERPRETATION AND APPLICATION OF SOUTH CAROLINA COMMON LAW AND RAISES NO CONCERNS RELEVANT TO THIS COURT'S EXERCISE OF ITS CERTIORARI JURISDICTION.

Petitioner advances none of the Rule 10, "special and important reasons" for this Court to exercise its discretionary certiorari jurisdiction. Petitioner does not and cannot contend:

- that the court of appeals' decision conflicts with the decision of another court of appeals;

- that the court of appeals decided a federal question that conflicts with the decision of a state court of last resort;

- that the court of appeals has so far departed or sanctioned the departure from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision;

- that the court of appeals decided an important question of federal law that should be settled by this Court; or

- that the court of appeals decided a federal question in a way that conflicts with application decisions of this Court.

Rather, the sum and substance of Petitioner's argument is that the district court and the court of appeals misconstrued South Carolina employment contract law, erred in finding that no material facts were in dispute, and thus erroneously held that Respondent was entitled to summary judgment. As is always true of a losing party, Petitioner's "vision" of South Carolina law is materially at odds with that of the Respondent, the district court, and the court of appeals. Petitioner had ample opportunity to convince both the district court and the court of appeals that the law and facts entitled him to a jury trial on his claims. He was not successful in doing so. Indeed, in denying Petitioner's unorthodox "Motion for Reconsideration," the district court correctly noted that "Plaintiff has merely rehashed the arguments and facts that the Court has found to be insufficient as a matter of law to support his breach of contract claim." [App. 4 at 4]. Petitioner is now attempting to "rehash" the matter again before this Court.

The petition should be denied for failing to raise any significant legal issues.

II.

PETITIONER HAS CONFUSED THE QUESTION OF WHAT IS A JURY ISSUE WITH THE QUESTION WHEN SUMMARY JUDGMENT IS APPROPRIATE BECAUSE THE PLAINTIFF HAS FAILED TO ADDUCE FACTS ESSENTIAL TO ITS CAUSE OF ACTION.

The essence of Petitioner's argument is that the district court and the court of appeals erred by granting Respondent's motion for summary judgment over issues that under South Carolina law should have been submitted to the jury. Petitioner, however, has confused the question of what is a jury issue with the question of whether there is sufficient evidence to send such an issue to the jury.

Petitioner correctly notes that under South Carolina law the jury normally decides whether a handbook, bulletin, or oral assurances have created an employment contract altering the at-will status of an employee [Petition at 9, 18-19, 20-21]; whether written conditions have been orally waived or modified [Petition at 13]; whether a handbook that contains both promissory language and a disclaimer is binding on the employer [Petition at 23]; and whether the contract has been breached [Petition at 25-26]. However, from those uncontroverted assertions Petitioner then takes a quantum leap of reasoning and concludes that "[t]he federal courts [below] . . . went to great lengths to deny Taylor a jury trial by deciding on the merits the very issues which the Supreme Court of South Carolina said were issues only for the jury." [Petition at 21-22].

The logic of Petitioner's argument would suggest that summary judgment is rarely if ever appropriate in a wrongful discharge case in South Carolina. Indeed, Petitioner expressly states that these have been "issues for a jury in almost every case since *Small I*." [Petition at 25]. This is simply not true.

The South Carolina courts have not abandoned summary judgment as a procedural device for screening out meritless cases that raise no issues of material fact, even on what would otherwise be jury issues. Since the first South Carolina handbook case in 1987, *Small I*, the South Carolina Supreme Court, the South Carolina Court of Appeals, the South Carolina trial courts, and the federal courts applying South Carolina law have repeatedly granted defendants' motions for summary judgment in cases involving issues similar to the issues in this case. *See, e.g., Wiedeman v. Ridgeway Mining Co.*, 8 I.E.R. Cas. (BNA) 983 (D.S.C. 1993); *Adams v. Square D. Co.*, 775 F. Supp. 869 (D.S.C. 1991); *Prezzy v. Food Lion, Inc.*, 4 I.E.R. Cases 996 (D.S.C. 1989); *Nettles v. Techplan Corp.*, 704 F. Supp. 95 (D.S.C. 1989); *Wadford v. Hartford Fire Ins. Co.*, 10 I.E.R. Cas. (BNA) 313 (D.S.C. 1988); *Marr v. City of Columbia*, 416 S.E.2d 615 (S.C. 1992); *Epps v. Clarendon County*, 405 S.E.2d 386 (S.C. 1991); *Holden v. Alice Mfg. Co.* 452 S.E.2d 628 (S.C. Ct. App. 1994); *Bookman v. Shakespeare Co.* 442 S.E.2d 183 (S.C. Ct. App. 1994); *Johnson v. First Carolina Financial Corp.*, 409 S.E.2d 804 (S.C. Ct. App. 1991); *Ballenger v. Jackson Mills*, 7 I.E.R. Cas. (BNA) 126 (S.C.C.P. 1991); *Lamond v. City of Myrtle Beach*, 7 I.E.R. Cas. (BNA) 128 (S.C.C.P. 1991); *Reitmeier v. Converse College*, 7 I.E.R. Cas. (BNA) 137 (S.C.C.P. 1991); *Blankenship v. South Carolina Elec. & Gas Co.*, 5 I.E.R. Cas. (BNA) 930 (S.C.C.P. 1990).

The judges in these cases did not wrongfully "deny [the plaintiffs] . . . a jury trial," any more than the district judge did in this case — contrary to the assertion of the Petitioner [Petition at 21]. Rather, like the district judge in this case, those judges carefully scrutinized the mass of evidence developed during discovery, measured it against controlling state law, and concluded that it was insufficient as a matter of law to support the plaintiff's claim. And like the trial judge's decision in this case, many of those decisions survived vigorous challenge on appeal.

In sum, Petitioner errs in asserting the district court misconstrued South Carolina law by granting defendant's motion for summary judgment.

III.

THE PETITION CONTAINS A NUMBER OF FACTUAL STATEMENTS NOT SUPPORTED BY THE RECORD, MISCHARACTERIZATIONS OF THE DECISIONS BELOW, AND MISSTATEMENTS OF LAW.

Rule 15 of the Supreme Court Rules cautions counsel to "address any perceived misstatements of fact or law set forth in the petition which have a bearing on the question of what issues would properly be before the Court if certiorari were granted." Respondent complies as follows:

1. Petitioner characterizes as a fact his "wrongful discharge." [Petition at 3]. This is contrary to the finding of the district court, which was upheld by the court of appeals.

2. Petitioner refers to an Employee Handbook and Supervisor's Manual containing "rules, policies and procedures outlining work violations and disciplinary procedures *for employees of Cummins*" [Petition at 4 (emphasis added)], implying that they were also *for Petitioner.* This is contrary to the finding of the district court, which was upheld by the court of appeals.

3. Petitioner asserts that "[t]he disciplinary process of giving a verbal warning, then written warning, and final warning status were not followed, *in breach of his employment contract* created by the handbook, manual, and oral representations." [Petition at 6 (emphasis added)]. This is contrary to the finding of the district court that these documents did not create a contract

between Petitioner and Respondent, a finding that was upheld by the court of appeals.

4. Petitioner asserts that by granting Respondent's motion for summary judgment, Petitioner was "denied any opportunity to present his claim to a jury in accordance with the laws of South Carolina as set forth by the Supreme Court of South Carolina since 1987." [Petition at 8]. Respondent denies that South Carolina law required or even permitted this case to go to a jury, and both the district court and the court of appeals agreed.

5. Petitioner asserts that in this case "the District Court completely ignored, misconstrued, and misstated principles of law established by the Supreme Court of South Carolina in wrongful discharge employee handbook cases." [Petition at 11-12]. Respondent submits that this is a grossly inaccurate characterization of the district court's carefully reasoned and fully documented decision.

6. Petitioner asserts that the "basic jury question in every wrongful discharge case involving handbooks or manuals is whether the employee was fired for good or just cause." [Petition at 12]. This is an erroneous statement of South Carolina law. The question is not whether "good or just cause" exists in the abstract; the question is whether the employer breached some clear and definite term of the contract created by the handbook or manual.

7. Petitioner asserts that "the District Court found that the Petitioner's claim must fail because the Respondent did not distribute either the manual or handbook to Petitioner." [Petition at 12]. This misstates the theory of the district court. The court was not concerned with distribution *qua* distribution, as if it were some mechanical process that must be satisfied. Rather, the court's focus was on the lack of any proof of an *offer* by Respondent to Petitioner, evidenced by distribution, publication,

or in some other fashion. [App. 3 at 21-25]. Contrary to the assertion of Petitioner, in *King v. PYA/Monarch, Inc.*, 453 S.E.2d 885 (S.C. 1995), the South Carolina Supreme Court merely held that if an employment manual does create a contract, an employer "may not insulate itself from liability by failing to circulate the Manual to employees." *Id.* at 888. The court did not dispense with the requirement of an offer. There, the offer consisted of an oral assurance to the plaintiff that the terms of the manual would be followed, an offer that was found to exist even though the manual was not physically distributed to the plaintiff. The case is thus not inconsistent with the district court decision in this case.

8. Petitioner faults the district court for looking to general contract principles and asserts that "[t]his finding by the District Court that traditional contract elements and principles are applicable to employee handbook contracts in South Carolina had already been overruled . . . ." [Petition at 13-14]. That is an erroneous statement of law; the cases cited by Petitioner do no such thing. What they do establish is that most employment contracts are unilateral contracts and that, therefore, they should not be analyzed by reference to the traditional bilateral contract theory. The unilateral contract theory espoused by the South Carolina courts is precisely the theory the district court used in analyzing this case. [App. 3 at 19-20].

9. Petitioner faults the district court for holding that "Petitioner could not prevail on his breach of contract claim unless he could establish that Respondent made an offer to him to alter the at-will nature of his employment." [Petition at 15-16]. Petitioner asserts that "[t]hat specific finding of the District Court had been thrown out in the 1987 *Small I* decision . . . ." [Petition at 16]. Ironically, in the remainder of that sentence, Petitioner refutes his own erroneous assertion that an offer is not required. Petitioner's sentence continues, ". . . which said that most employment agreements are unilateral agreements in which the

employer *makes an offer or promise* to hire in return for specified benefits and wages." [*Id.* (emphasis added)]. The latter part of the sentence is correct. And evidence of "an offer" to alter Petitioner's at-will status is exactly what the district court held was lacking in this case.

10. Petitioner faults the district court for finding that the commission agreements did not alter Petitioner's at-will status. [Petition at 17]. Petitioner then asserts that this "finding" is "contrary to" the South Carolina Court of Appeals's decision in *Hendrix v. Eastern Distr., Inc.*, 446 S.E.2d 440 (S.C. Ct. App. 1994). Again, that is an erroneous statement. The *Hendrix* decision is in no way "contrary" to the district court's "finding" on the specific facts of this case. *Hendrix* merely held that oral assurances are capable of modifying an otherwise at-will contract. *Id.* at 443. There, the oral assurances were that the employer would not terminate the plaintiff for the purpose of avoiding paying her commissions. *Id. Hendrix* does not even remotely suggest that commission agreements themselves, like the ones involved in this case, necessarily have the effect of limiting the at-will relationship.

11. Petitioner asserts that "the District Court made another error attempting to support its summary judgment Order by holding that oral assurances cannot alter the at-will status of an employee." [Petition at 18]. Presumably, that is a reference to Part C of the district court's opinion. [App. 3 at 27-28]. The assertion, however, is erroneous. As is readily evident, the court held no such thing. All the court held there was that a certain type of oral assurance — namely, vague assurances of indefinite employment as long as the employee did his job — were incapable of altering the at-will status of an employee. This is entirely consistent with not only the cited case, but with other South Carolina precedent. *Reitmeier v. Converse College*, 7 I.E.R. Cas. (BNA) 137 (S.C.C.P. 1991); *Allan v. Sunbelt Coca-Cola Bottling Co.*, 4 I.E.R. Cas. (BNA) 1453 (S.C.C.P. 1989).

12. Petitioner asserts that the "District Court further stated that oral assurances of one particular aspect of employment could not alter the at-will status of an employee." [Petition at 19]. That is also an erroneous assertion. The district court never made that statement or anything similar to it. Perhaps Petitioner intended to refer to the quotation from the *Wadford* case. [App. 3 at 28-29]. All that case states, however, is that when an employer says an employee will not be terminated for one reason, that does not necessarily mean the employee cannot be terminated for other reasons. The *Hendrix* and *Bookman* cases, cited by Petitioner, merely hold that when an employer says an employee will not be terminated for particular reasons (to avoid paying commissions or for filing a sexual harassment complaint) then the employee cannot be terminated for that reason. *Hendrix*, 446 S.E.2d at 443-44; *Bookman*, 442 S.E.2d at 184. Those cases are completely consistent with the district court's finding that Petitioner failed to adduce sufficient evidence of any assurance by Respondent that Petitioner would *not* be terminated for any particular reason, least of all his inadequate job performance.

13. Petitioner notes that the court of appeals correctly stated that the issues in this case were whether Petitioner's "at-will status was transformed into a contractual relationship" or whether Petitioner remained "an at-will employee and could be discharged at any time without cause." [Petition at 20-21]. Petitioner notes that these are jury issues in South Carolina. [Petition at 21]. But Petitioner then states, "Somehow the District Court found these were not jury issues and decided these questions as a matter of law." *Id.* That is an erroneous statement. The district court found no such thing. Rather, it merely held that Petitioner had not adduced sufficient evidence to send this issue to the jury.

14. Petitioner states that "[t]he federal courts, however, went to great lengths to deny Taylor a jury trial by deciding on the

merits the very issues which the Supreme Court of South Carolina said were issues only for the jury." [Petition at 21-22]. That is an erroneous statement. The district court and the court of appeals did no such thing. *See* Argument II, above.

15. Petitioner states that the effectiveness of a disclaimer "is *primarily* a matter for the jury to decide" [Petition at 23 (emphasis added)] and then faults the court of appeals for thus suggesting that the disclaimer in this case would defeat Petitioner's claim. [Petition at 22]. If Petitioner is suggesting that under South Carolina law disclaimer issues can never be decided on a motion for summary judgment, that is erroneous. In *Fleming v. Borden, Inc.*, 450 S.E.2d 589 (S.C. 1994), the South Carolina Supreme Court expressly recognized that "[t]here may be . . . cases when summary judgment is appropriate" on disclaimer issues. *Id.* at 596.

16. Petitioner faults the court of appeals for noting that the Petition "cited no specific language from either handbook or the manual establishing that an employment contract was created but simply relied on the allegation that provisions of the handbook and/or manual applied to him, thereby altering his at-will status." [Petition at 23-24]. Petitioner then asserts that "this is the foundation of South Carolina law the federal courts in this case would not accept." [Petition at 24]. If Petitioner is saying that under South Carolina law the mere existence of a handbook or manual necessarily alters the at-will relationship, that is an erroneous statement. Rather, even if a handbook or manual exists, it cannot be considered contractual unless it contains specific policies couched in "mandatory" terms. *Small v. Springs Indus., Inc.*, 357 S.E.2d 452, 455 (S.C. 1987); *Allan v. Sunbelt Coca-Cola Bottling Co.*, 4 I.E.R. Cas. (BNA) 1453, 1456 (S.C.C.P. 1989) (handbook contained no specific procedure or policy for dealing with layoffs and terminations). This is the point the court of appeals was making in Part II.A. of the opinion, the part

containing the language to which Petitioner objects. Thus, in noting that the discipline policies in the handbook and manual were couched in language that was "permissive, not compulsory" [App. 1 at 5], the court of appeals was merely following South Carolina law.

17. Petitioner also states that "if there are company work rules and regulations and a disciplinary policy and procedure observed by the company, then those representations can alter the at-will status of *the employee*." [Petition at 24 (emphasis added)]. If Petitioner intends here to refer to himself as "the employee," then that is an erroneous statement since it assumes what is at issue, namely whether these terms and conditions of employment were ever even offered to Petitioner.

18. In addition, Petitioner asserts that this "is just one of the issues for the jury that the District Court and Court of Appeals have taken away from Petitioner." [Petition at 25]. Again, that is an erroneous statement of law. If the Petitioner has failed to adduce sufficient evidence that these terms and conditions were offered to him, then this is *not* an issue that must be submitted to the jury under South Carolina law.

19. Finally, Petitioner asserts that the court of appeals erroneously decided a jury issue by concluding that "even if . . . Taylor's at-will status was altered, he received the procedure to which he was entitled." [Petition at 25]. If Petitioner is suggesting that the question of breach can never be decided on a motion for summary judgment, that is an erroneous statement of law. Although that would often be a jury issue, like all other jury issues it can be resolved by the court if, as here, the evidence of compliance is undisputed.

CONCLUSION

For the above reasons, the petition for a writ of certiorari in this case should be denied.

Respectfully submitted,

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